

STATEMENT OF THE CASE

Jacob J. Cummings appeals the sentence he received on his convictions for possession of methamphetamine, as a Class D felony; possession of a syringe, as a Class D felony; and possession of marijuana, as a Class A misdemeanor, following his guilty plea. Cummings raises a single issue for our review, which we restate as the following two issues:

1. Whether the trial court abused its discretion when it sentenced him to an aggregate term of three years.
2. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 30, 2010, Kokomo Police Department officials received a tip that Cummings had been involved in several local burglaries and was staying at a certain hotel in possession of methamphetamine. Officers arrived at that hotel to talk with Cummings, but he had fled the scene. The officers later tracked him down and, upon seeing the officers, they witnessed him throw away a pill case with four baggies of methamphetamine inside. The officers then executed a search warrant for the hotel room and seized two syringes, marijuana, a digital scale, baggies containing methamphetamine, a ledger for sales, a cell phone, and \$142.99 in cash.

On September 1, the State charged Cummings with multiple counts. On January 7, 2011, Cummings pleaded guilty to three counts and, in exchange, the State dismissed

an allegation of dealing in methamphetamine, as a Class B felony. Later, the court sentenced Cummings to an aggregate sentence of three years, stating:

I find that the defendant's prior history is an aggravating factor. I find the fact that he was a fairly recent graduate of drug court when this crime was committed is an aggravating factor. I don't find any mitigating factors. One thing, Mr. Cummings, you need to think about is your definition of relapse. Relapse is generally, at least in the drug addiction world, somebody who has episodic use of their drug of choice or a different drug of choice. . . . [Y]ou used continually . . . until you got caught. That's not a relapse. That's a pattern of behavior. This is a knowing and intentional choice that you made and it's not unusual for an addict to make that choice. . . . I believe you're an addict Home detention simply will not provide you supervision that you need, improvement that you need in order to stay clean and sober.

Transcript at 19-21. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Abuse of Discretion

Cummings argues that the trial court abused its discretion when it sentenced him. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds on reh'g, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. Id.

One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. . . .

[However, b]ecause the trial court no longer has any obligation to “weigh” aggravating and mitigating factors against each other when imposing a sentence, . . . a trial court can not now be said to have abused its discretion in failing to “properly weigh” such factors.

Id. at 490-91.

Cummings first asserts that the trial court’s sentencing statement is insufficient for appellate review. We have reviewed the record and cannot agree. The trial court clearly articulated its rationale for Cummings’ sentence. See transcript at 19-21.

Similarly, Cummings contends that the trial court did not explain its rationale for imposing a sentence greater than the advisory sentence for his Class D felony conviction. But the court plainly stated that it imposed that sentence in light of Cummings’ criminal history, his recent history in the drug court, and the fact that incarceration is necessary to provide the supervision for Cummings and his addiction. Thus, the enhancement was not an abuse of the court’s discretion.

Cummings next contends that the trial court failed to consider his proffered mitigators of remorse and his guilty plea. But Cummings makes no showing on appeal that his remorse was a significant mitigator. See, e.g., Ousley v. State, 807 N.E.2d 758, 763 (Ind. Ct. App. 2004) (“our concern upon appeal is to determine whether the trial court improperly overlooked a significant mitigating factor that is clearly supported by the record.”). And in exchange for his guilty plea, the State dismissed a Class B felony allegation. Thus, Cummings had already received a significant benefit from his plea and the court was not obliged to extend him another. See Anglemeyer, 875 N.E.2d at 221.

Finally, Cummings states that the trial court failed to balance the aggravators and mitigators properly. This is a request for this court to reweigh those factors, which we will not do. See Anglemeyer, 868 N.E.2d at 490-91.

Issue Two: Appellate Rule 7(B)

Cummings also contends that his three-year sentence is inappropriate in light of the nature of the offenses and his character. See Ind. Code § 35-50-2-6(a). Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of her offense and her character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Roush, 875 N.E.2d at 812 (alteration original).

Moreover, “sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana’s flexible sentencing scheme allows trial courts to tailor

an appropriate sentence to the circumstances presented. See id. at 1224. The principal role of appellate review is to attempt to “leaven the outliers.” Id. at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on “our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case.” Id. at 1224.

Cummings’ three-year aggregate sentence for two Class D felony convictions and one Class A misdemeanor is not inappropriate in light of the nature of the offenses.¹ Cummings fled from police at his hotel room and attempted to throw away methamphetamine when officers later found him. Officers then seized two syringes, marijuana, a digital scale, baggies containing methamphetamine, a ledger for sales, a cell phone, and \$142.99 in cash from Cummings’ hotel room. In light of the nature of these offenses, we cannot say that a three-year aggregate term is inappropriate.

Neither is Cummings’ sentence inappropriate in light of his character. In support of his claim on appeal, Cummings emphasizes his illness with drugs and his desire to get help for substance abuse. But Cummings’ criminal involvement with drugs and alcohol is extensive, with several juvenile adjudications, one adult felony conviction, and one adult misdemeanor conviction. Cummings also had judgment on a prior Class C felony conviction for burglary deferred pending his successful completion of drug court. Although he successfully completed drug court, the fact that he is again in court for a drug-related crime reflects poorly on his character and undermines his appellate contentions. As the trial court noted at sentencing, Cummings has not suffered a relapse

¹ We note that Cummings’ Appellate Rule 7(B) argument focuses only on his character. But to succeed on this issue, he must show “that his sentence is inappropriate in light of both the nature of his offenses and his character.” Williams v. State, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008).

but has by choice knowingly and intentionally engaged in a pattern of unlawful behavior. We cannot say that his aggregate sentence of three years is inappropriate. We affirm Cummings' sentence.

Affirmed.

RILEY, J., and MAY, J., concur.